



# BENCHERS' BULLETIN

Keeping BC lawyers and the public informed

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## Law Society enhances discipline and CPD

by G. Glen Ridgway, QC

THE PEOPLE IN my office, and many of our lawyers, often ask me, “*What does the Law Society do?*” While perhaps they are more interested in what I, in particular, am doing for the Law Society, I would like to use this column to speak to what the Law Society is doing.

The Law Society has many functions. Some of these functions are core. They go to the very centre of our purpose. One such function is discipline. This is perhaps the area where we, as a law society, have the most interface with the public and a role most subject to scrutiny. This year, and likely in the next few years, the Law Society is looking at some aspects of our discipline process. Last year’s directive to speed up the investigative portion of discipline is being implemented. We are working to ensure that the time between complaint and referral to the Discipline Committee is one year or less wherever possible.

In addition, task forces are working on two other aspects of discipline.

The task force on the separation of functions (adjudicative/prosecutorial) has completed its work. Under the present structure, Benchers, through the Discipline Committee, authorize the prosecution of allegations against lawyers, and Benchers, sitting on discipline hearing panels, perform the adjudicative aspect of the discipline process. This task force has recommended change. The Benchers have adopted the recommendations of this task force and the necessary rule changes are being drafted. The effect of these changes will be to expand the group of individuals who can serve on discipline panels. Going forward, the three-person panels will be drawn from three distinct groups or pools. One pool will be composed of the sitting elected Benchers. Another pool will be composed of Life Benchers and other lawyers. The third pool will be composed of appointed Benchers, both current and Life,

and other non-lawyers. The aim is to have membership from each of those pools on each of the discipline panels.

The dual role of prosecutor and adjudicator has been a sensitive issue for Benchers and the Law Society over the years. It must be said that the task force sees this initial step as an interim one. The ultimate goal is a complete separation between Benchers as prosecutors and Benchers as adjudicators.

This provides an opportunity for non-Bencher lawyers to participate in the adjudicative stage of our discipline process. We already have non-Bencher members participating in the Discipline Committee. The Benchers will seek volunteers to serve in this new capacity, once they have decided on the criteria.

The other task force dealing with discipline matters has made a recommendation with respect to abeyances. There has been a practice of putting our proceedings into abeyance while other proceedings involving the lawyer being investigated are ongoing. This often leads to a long delay and to criticism of our process from both the public and lawyers.

The Benchers have adopted a new approach with respect to abeyances and their use in the future. Certain principles have been adopted, as have the guidelines. These guidelines will be worked through by our Discipline Committee as it implements the new approach to abeyances.

The new principles on abeyances have at their core the following considerations:

1. There will be no presumption to hold matters in abeyance pending other proceedings.
2. Law Society complaint investigations will go as far as possible before abeyances will be considered.
3. No abeyance will be put in place unless appropriate measures dealing

### BENCHERS' BULLETIN

The *Benchers' Bulletin* and related newsletters are published by the Law Society of British Columbia to update BC lawyers, articled students and the public on policy and regulatory decisions of the Benchers, on committee and task force work and on Law Society programs and activities. BC lawyers are responsible for reading these publications to ensure they are aware of current standards, policies and guidelines.

Suggestions on improvements to the *Bulletin* are always welcome — please contact the editor. Additional subscriptions to Law Society newsletters may be ordered at a cost of \$50 (plus HST) per year by contacting the subscriptions assistant at [communications@lsbc.org](mailto:communications@lsbc.org). To review current and archived issues of the *Bulletin* online, see “Publications & Forms/Newsletters” at [lawsociety.bc.ca](http://lawsociety.bc.ca).

#### PHOTOGRAPHY

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with the protection of the public are put in place for this interim period.

- Abeyances must be justified. There must be a reasonable prospect that the Law Society's discipline process will cause prejudice by its continuance or that the other proceedings will be useful in providing information for the Law Society's proceeding.

These principles and the guidelines for the Discipline Committee in determining these matters are posted on the Law Society website (see Appendix 4 of the Benchers' Governance Policies). It is my view that this approach will serve the public and the profession much better and will ensure a timely and appropriate resolution of complaints.

There is one other topic I would like to address, that being continuing professional development (CPD). By the time this

column is published, we will have had our Annual General Meeting, at which there is a member resolution to reduce the CPD requirements for part-time members.

We are now into our second year of CPD. Hopefully, lawyers are a bit more advanced in acquiring their hours than they were in the first year. Our staff spent a great deal of time late last year and early this year in stretching lawyers across the CPD threshold. Staff will not be able to provide a similar level of assistance this year, so it is important to resolve your CPD requirements early.

I can also indicate that the Lawyer Education Advisory Committee will be reviewing CPD now that we have some experience with its operation. It is very unlikely that the hour requirement will be reduced, but there is some consideration of other modifications. For instance, the Barreau du

Québec has a 30-hour requirement, but in a two-year span.

I would also like to remind and alert lawyers that, beginning in January 2010, mentoring was included as an activity that earns CPD credits. The Law Society very much wants to encourage mentoring of younger lawyers. This was quite common in the past, but seems to have declined in recent years. Young lawyers in particular are getting less time in court.

It is now possible to obtain six credit hours as a young lawyer who has a mentor and six credit hours for that mentor. For the mentor, that is six credit hours for each lawyer that he or she is assisting, to a total of twelve credit hours.

Please check the Licensing & Membership section of our website for details of the mentoring program and CPD credits in general. ❖

## Law Society scholarship

The Benchers have chosen Jeffrey Yuen to receive the Law Society scholarship for 2010. After working internationally in

ecology and conservation, Yuen decided to pursue law. He graduated from UBC law school in 2008 and clerked with Madam

Justice Louise Charron at the Supreme Court of Canada.

Yuen intends to pursue an LL.M. at Harvard University. He plans to engage in an international comparative analysis of the law's capacity to respond to the social transformation of the family. Specifically, he expects to examine the persistence of legal structures that undermine ideals of equality by limiting the legal parenting capacity of persons who fall outside of traditional parenting norms (such as same-sex couples, single persons or non-biological caregivers).

Ultimately, Yuen intends to return to BC and pursue a career focusing on the intersection of family law and reproductive technology, integrating both legal practice and academic research.

The Law Society scholarship of \$12,000 is offered annually to encourage and financially assist the recipient in completing graduate studies that will ultimately benefit the individual, the province and the legal profession. ❖





## Conference season in Vancouver

by Timothy E. McGee

AS I WRITE this, I am looking forward to the International Bar Association annual conference, to be held in Vancouver in early October. I hope that many of you will have taken advantage of the opportunity to attend some of the many conference events.

The Law Society will be an active participant in the conference, and I look forward to learning more about topics that are very much at the fore here at home.

We are pleased to be sponsors of a dinner hosted by the Bar Issues Commission (BIC) of the IBA, which exists to address issues facing the profession and to provide opportunities for member organizations to meet and learn from one another.

This year, the BIC's focus is on the future of legal aid — very much in line with the concerns of the legal community in British Columbia. Earlier this year, the Law Society, in conjunction with the BC Branch of the Canadian Bar Association, the Law Foundation of BC and several other legal associations, helped to establish the Public Commission on Legal Aid to engage the public in determining strategies for sustaining legal aid. The commission, ably chaired by Len Doust, QC, is now well into its 11-community tour of the province and we look forward to the final report.

In addition, both the Law Society's Delivery of Legal Services Task Force and Access to Legal Services Advisory Committee have been looking at finding ways to enhance access to legal services while continuing to protect the public interest. At the October 1, 2010 Benchers meeting, the Benchers passed a recommendation to expand the scope of legal services that paralegals can provide to the public under the guidance of a supervising lawyer.

Another IBA conference event, the Rule of Law Symposium, will speak to an issue that was the focus of the Law Society's 125th anniversary program last year. This symposium keeps the spotlight on the

importance of an independent legal profession and independent judiciary as necessary conditions for the preservation of the rule of law. As the program aptly states, "An independent bar and an independent judiciary with impartial judges are cornerstones in a democratic society and a prerequisite for upholding the rule of law." The Right Honourable Beverley McLachlin, PC, Chief Justice of Canada will be adding her perspective to this important discussion.

Just prior to the IBA conference, I will be the local host for the annual conference of IILACE (International Institute of Law Association Chief Executives) in Vancouver. The IILACE conference will bring together the chief executives of bar regulatory and law association groups from over 15 countries including Canada, England, Scotland, Ireland, Germany, Norway, Sweden, China, Australia, the United States and several African countries. The overarching topic for discussion this year is "The Core Values of the Legal Profession."

The conference will explore the notion of core values, whether they are the same everywhere, whether they are changing and whether core values are being upheld around the world. The delegates will be asked to complete a survey, which will provide valuable data for further discussion and analysis on the topic. I will report on the results of the IILACE discussions at the November Benchers meeting and in the next edition of *Benchers' Bulletin*.

The fall is conference season around the world and this year Vancouver is the centre for law-related conferences with a global flavour. From my perspective, a conference is a success if it stimulates an exchange of ideas on topics that the participants have a vested and shared interest in better understanding. Based upon the effort that has gone into choosing the topics and planning the discussions for both the IBA and the IILACE conferences in Vancouver, I think the success of both events is assured. ❖



Tim McGee addresses the candidates for call and admission at the September call ceremony in Vancouver.

## Annual general meeting



ONE HUNDRED NINETY-EIGHT lawyers and 14 students attended the Law Society's annual general meeting on September 28.

Art Vertlieb, QC was acclaimed Second

Vice-President for 2011. Carol Hickman spoke to his nomination, noting that Vertlieb represented an outstanding candidate given his credentials and vast experience.

A majority voting at the AGM were in favour (151:6) of the 2011 practice fee of \$1,729.14. Gavin Hume, QC, Chair of the Finance Committee, noted that the increase in the fee from 2010 is largely the result of the decision to fund the forensic accounting program from the practice fee, rather than the trust administration fee. Combined with the Lawyers Insurance Fund assessment, which will increase to \$1,750 due to continuing economic pressure on claims and investment returns, and the \$5

Special Compensation Fund assessment, down from \$50 in 2010, the total fees for 2011 are \$3,484.14.

The members voted against (43:111) a resolution submitted by lawyers Ian R. Sisett, Robert Porter, QC and Tom Smithwick, QC, which proposed a reduction in the continuing professional development requirements for part-time practising lawyers. However, those speaking for the motion raised a number of concerns and suggestions that will be taken into account when the Lawyer Education Advisory Committee reviews the CPD program in 2011. ❖

## Half-way there: Benchers make significant progress on strategic plan

THE BENCHERS CONTINUE to make significant strides in carrying out the goals of the Law Society three-year strategic plan, which was launched in early 2009 and is set for completion by year-end 2011.

As reported by CEO Timothy McGee at a recent Benchers meeting, implementation of the plan is progressing well and on schedule. Of 20 total initiatives outlined in the plan, eight have been completed, nine are under way and the commencement of work on three is pending.

The strategic plan is written around three principal goals aimed at achieving concrete results that will improve the public interest in the administration of justice. They include:

1. enhancing access to legal services;
2. enhancing public confidence in the legal profession through appropriate and effective regulation of legal professionals;
3. effective education, both of legal professionals and those wishing to become legal professionals, and of the public.

"The progress to date has been impressive," explains McGee. "The process has tried to

avoid simply identifying issues on which the only action would be to make general comments. So far, I believe we have successfully done that and we are seeing it in the achievements to date."

By way of example, one of the plan's strategies to enhance access to legal services is to develop a new regulatory paradigm that may broaden the range of persons permitted to provide certain legal services.

At the June 2010 Benchers retreat, a presentation was made by the Delivery of Legal Services Task Force that focused on expanding the responsibilities of lawyer-supervised paralegals to increase the availability of effective and affordable legal services. At the October 2010 meeting, the Benchers approved a plan to increase the roles that paralegals and articulated students can perform under the supervision of a lawyer.

Another strategy to enhance access to legal services is to improve the retention rate of lawyers in the legal profession including, in particular, Aboriginal lawyers.

In July 2009, a business case was developed by the Equity and Diversity Advisory Committee outlining a series of

recommendations aimed at improving the retention of women lawyers in the profession. Staff is now following up on two of the recommendations and the report has received broad exposure amongst the legal profession.

The Committee is now reviewing recent research regarding retention of lawyers from diverse communities, including Aboriginal lawyers, with plans to develop a business case for diversity and the retention of Aboriginal lawyers in British Columbia.

"At this pace," said McGee, we expect to complete our first strategic plan on schedule and be in a position to assess any emerging priorities for the current or next iteration of the plan." ❖

### ERRATUM

The photos of Aldred John Scow and Joel Cardinal were reversed on page 14 of the Summer 2010 *Benchers' Bulletin*. Apologies to both Scow and Cardinal for the error. The online version of the *Bulletin* is correct.

## Roles of paralegals and articulated students to be expanded

IN ORDER TO enhance the public's access to competent and affordable legal services, the Benchers have approved a plan to increase the roles that paralegals and articulated students can perform under the supervision of a lawyer.

The recommendations came from the Delivery of Legal Services Task Force, which is chaired by Art Vertlieb, QC. "Really rich people can get lawyers," said Vertlieb, "and many really poor people can seek assistance through legal aid, pro bono and other providers. This change is designed to help those, such as the teacher, police officer or office worker making perhaps \$70,000 a year, who can't afford a lawyer. They're a really important part of our community and I think this is really going to help them."

The approach focuses on incremental change. The object of these reforms is not to constrain existing practices; it is rather to enhance the public's access to legal services.

The Benchers accepted the task force's recommendation that articulated students be allowed to perform enhanced functions, such as acting as Commissioners for Oaths. The Benchers have requested the statutory change to allow that. The Credentials Committee will further explore what those expanded duties for articulated students will look like.

The Benchers also accepted the task force's recommendation that paralegals be allowed, in certain circumstances, to give legal advice under the supervision of a lawyer. The Law Society will also hold future

consultations with the province's courts to determine whether, and if so in what circumstances, paralegals should be permitted to act as advocates.

Access to justice issues are complicated and will require a broad range of solutions; nevertheless, the Benchers believe this step is an important one in the right direction that will allow the profession to better meet the legal needs of the public it serves.

The Delivery of Legal Services Task Force was created to advance one of the strategies in the Law Society's Strategic Plan, to increase the public's access to legal services by developing a new regulatory paradigm that may broaden the range of persons permitted to provide certain legal services. ❖

## In Brief

### THE 2010 BENCH & BAR DINNER: NOVEMBER 3



The 2010 Bench & Bar dinner is being held on November 3 at the Fairmont Hotel in Vancouver. Come and join your colleagues and judges as we honour both the late Honourable **John Charles**

**Bouck**, recipient of the Law Society Award for 2010, and the recipient of the CBA's Georges A. Goyer, QC Memorial Award for Distinguished Service, which will be announced shortly.

For more information or to download the flyer and registration form, go to the Calendar on the Law Society's website at [lawsociety.bc.ca](http://lawsociety.bc.ca).

### QC NOMINATIONS

The Attorney General's office is now accepting nominations for Queen's Counsel. Nominations will only be accepted using an online nomination form, and the Queen's Counsel Appointments Advisory Committee no longer requires or considers letters of support. Deadline for nominations is October 29.

For more information, visit the Ministry's website at [www.ag.gov.bc.ca/queens-counsel/index.htm](http://www.ag.gov.bc.ca/queens-counsel/index.htm).

### JUDICIAL APPOINTMENTS

**Jennifer Power**, QC, formerly regional Crown counsel with the Ministry of the Attorney General (Victoria), was appointed to the Supreme Court of BC in Nanaimo. She replaced Mr. Justice D.L. Halfyard who elected to become a supernumerary judge in July 2009.

**Sheri Ann Mark**, formerly the deputy regional Crown counsel for Kamloops, was appointed to the BC Provincial Court in Kamloops district.

**Roy Couper Dickey**, formerly Crown counsel in Kamloops, was appointed to the BC Provincial Court in South Fraser.

**Steven Myles Merrick**, formerly a partner at Silversides, Merrick & McLean, was appointed to the BC Provincial Court in Coast district.

**James Parker MacCarthy**, QC, formerly associate counsel with Ramsay Lampman Rhodes in Nanaimo, was appointed to the BC Provincial Court in North Vancouver Island.

Supreme Court Master **Marguerite Elizabeth Shaw** (Kamloops) was appointed to the BC Provincial Court in the Okanagan. ❖

Call ceremony, September 17, 2010



## Discipline rules amended

THE BENCHERS HAVE approved extensive amendments to the discipline rules. The changes are largely procedural in nature and are intended to make the process of ordering and issuing a citation and running a hearing more efficient and effective. The various changes include the following:

- **Terminology will more closely reflect the *Legal Profession Act*** – The old rules use terminology that is reflective of the criminal process. Language will be updated to that used in the governing statute, which is more appropriate to administrative law.
- **Discipline Committee to authorize citations** – Under the old rules, only the chair of the Discipline Committee or any three Benchers could authorize a citation. In the interests of a clearer and more transparent procedure, that authority, which includes authorizing additional allegations and rescinding individual allegations in an existing citation, will now rest with the Discipline Committee. If a situation is urgent, the chair alone may order a citation.
- **Issuing a citation separated from notice of a hearing** – A citation will no longer be required to include the date of the hearing, which can delay the issuance of a citation considerably. Instead, a notice of hearing advising the

date and time of the hearing will be sent to the respondent later.

- **Panel membership open to non-lawyers** – Panel members must be adult permanent residents of BC, but do not have to be Benchers, Life Benchers or lawyers. This will allow implementation of a policy adopted by the Benchers earlier in the year that hearing panels should be drawn from three pools: current Benchers, non-bencher lawyers and non-lawyers. Implementation awaits the approval of criteria for selection of members of the latter two pools.
- **Resolution of preliminary questions before hearing** – Before the hearing begins, a party may apply for severance of allegations in a single citation or joinder of two or more citations, or for the determination of other questions. A procedure is provided for such applications.
- **Prehearing conference procedures** – Notice of a prehearing conference must be given to the respondent, but the respondent or his or her counsel need not attend in person. The Chambers Bencher may proceed in the absence of the respondent.
- **Summary hearing for breach of any**

order – The summary hearing rules are now available when breach of any order made under the Act or Rules is in issue.

- **Panels may review agreed facts in advance of hearing** – The hearing panel can review an agreed statement of facts, as well as the citation, in advance of the hearing.
- **Some rules are corrected or improved:**
  - the confidentiality that applies to consideration of complaints by the Discipline Committee extended to cover the chair's consideration of complaints in urgent situations;
  - rules dealing with the content of citations are moved ahead to improve the flow of the Rules;
  - the list of forms of evidence that a hearing panel may consider is clarified to expressly include oral and affidavit evidence;
  - electronic service of documents is expressly permitted.

The new rules are published on the website (see Publications & Forms/Act, Rules & Handbook) and will be included in the December 2010 *Member's Manual* amendment package. ❖



## Aboriginal Law Gathering

Law Society President Glen Ridgway, QC, Chair of the Equity and Diversity Advisory Committee Robert Brun, QC and staff policy lawyer Susanna Tam were among the approximately 50 people who attended a gathering for Aboriginal lawyers in Vancouver on September 17. Katrina Harry, a First Nations lawyer, organized the event to foster networks and discussion about supports legal organizations can provide for Aboriginal lawyers.

The Law Society's participation in the event fits with the Benchers' strategic objective to retain more Aboriginal lawyers in the legal profession.

*Photos, clockwise from top left: Katrina Harry addresses attendees; Pamela Brun, Robert Brun, QC and Ming Song; Rosalie Wilson, Karen Osachoff, Leah George-Wilson and Cindy Allen; Glen Ridgway, QC, Katrina Harry and Robert Brun, QC.*

FROM THE LAW FOUNDATION OF BC

## CIBC raises rate of return

LAW FOUNDATION CHAIR, Mary Mouat, commends Canadian Imperial Bank of Commerce for its commitment to paying a very competitive rate of return on lawyers' pooled trust accounts. Recognizing the overall negative impact of protracted low interest rates on the Law Foundation's revenues, CIBC agreed to a new tiered-rate interest agreement effective July 1, 2010, that will provide a substantial increase to the Foundation's overall trust revenues.

Thanks go to Agnese Francescon, Business Solution Specialist, Retail Division and Ron Molyneaux, Senior Financial Services Representative of Canadian Imperial Bank of Commerce for the leadership shown in making this new agreement possible.

Increased revenues enable the Law Foundation to fund programs that make the justice system accessible to the people

of BC. The funded programs include professional legal education, public legal education, law reform, legal research, legal aid and law libraries.

The Law Society, the CBA, BC Branch

and the Law Foundation encourage lawyers to consider which financial institutions provide the best support to the Law Foundation when deciding where to place their trust accounts. ❖

### 2009-10 LAW FOUNDATION OF BC GRADUATE SCHOLARSHIPS

In 2009-10, 10 University of Victoria law students received Law Foundation graduate scholarships. This important Law Foundation program provides vital financial assistance to LL.M. and Ph.D. students.

Each recipient is engaged in interdisciplinary research that examines law within wider social, political, historical and economic contexts. The graduate research conducted by this accomplished group of students will contribute to many different areas of law.

The recipients of the 2009-10 scholarships are Michael Large, Connie Nisbet, Daniel Parrott, Jing Qian, Shaochen Qu, Supriya Routh, Jennifer Smith, Jagteshwar Sohi, Ania Zbyszewska and Zhong Zhuang.

## Electronic delivery of financial statements to be decided via referendum

AT THEIR SEPTEMBER 2010 meeting the Benchers resolved that a referendum be held on whether the Benchers may amend Rule 1-6 to allow distribution of the audited financial statements to members electronically rather than by traditional mail.

The referendum information sheet, referendum ballot and return envelope will be mailed to all lawyers later this month and returned ballots will be due November 12, 2010.

Under section 12(3) of the *Legal Profession Act*, the Benchers require membership approval before amending certain

rules — including the rules relating to annual general meetings — by a two-thirds majority vote of the members voting in a referendum.

Rule 1-6(8)(b) requires the Law Society to mail to each member, not less than 21 days before an annual general meeting, an audited financial statement of the Law Society for the previous calendar year.

It has become quite common for organizations to distribute their financial statements electronically rather than on paper, and some lawyers have expressed concern that the Law Society is still printing and

distributing paper copies of the financial statements.

This year, the cost of printing and distributing the audited financial statements to every Law Society member exceeded \$20,000. It is the Benchers' view that making the financial statements available to lawyers electronically would be more cost-effective, timely and environmentally friendly.

If you have any questions about the referendum, please contact Bill McIntosh, Manager, Executive Support at [bmcintosh@lsbc.org](mailto:bmcintosh@lsbc.org).

## Lawyers to be surveyed to evaluate Law Society communications

THE LAW SOCIETY is planning to conduct a survey of BC lawyers this fall to assess current communication strategies and publications.

"The goal of the survey is to find out if there are any improvements we can make in the way we communicate with lawyers across the province," said Robyn Crisanti, Manager, Communications and Public Relations for the Law Society. "There are a number of tactics that we currently use and it's been many years since we asked lawyers what they thought about them. It's time to ask again."

The survey will be brief and will ask lawyers for comments on Law Society publications, including the *Benchers' Bulletin*. The survey will also ask about electronic communication tools, such as E-Brief and Notices to the Profession, as well as the Law Society website.

"We are in the process of redesigning the website, so are anxious to find out what lawyers like and don't like about the current site," explained Crisanti.

The survey design is yet to be completed, and it is likely that only a sample of lawyers will be contacted. However, you

are encouraged to submit your comments and ideas at any time to [communications@lsbc.org](mailto:communications@lsbc.org).

"We really appreciate it when lawyers take the time to contact us directly with their feedback. It's extremely useful to us," said Crisanti.

The website redesign will take place over the next several months. It is a significant project, especially given that the current site has about 2,000 pages. The goal of the project is to develop a site that is easier to navigate for both lawyers and the public.

In addition to offering suggestions through the survey or on an ad hoc basis, lawyers are invited to participate as "test users" of the website as it is developed. "We are hoping to have a group of lawyers willing to evaluate the site as it is created so that the final product more closely meets the needs of this important user group," described Crisanti. The required time commitment will be minimal and all evaluation will be done online. If you are interested, please contact [communications@lsbc.org](mailto:communications@lsbc.org).

### Sign up to receive Law Society newsletters electronically

With few exceptions, all materials created by the Law Society and distributed to BC lawyers are available electronically and can be sent by email. That includes *Benchers' Bulletin*, changes to the Act, Rules and Handbook, and much more.

To sign up for electronic distribution, simply log in to your Law Society account and under "Member Options," choose the link "Email Address and Email Choices." Under "Law Society publications by email" select the option "I DO want to receive the *Benchers' Bulletin*, related newsletters and *Member's Manual* amendments in electronic form".

For more information, email [communications@lsbc.org](mailto:communications@lsbc.org).

PRACTICE WATCH, by Barbara Buchanan, Practice Advisor

## Are you an easy target for fraudsters?

### HAVE YOU RECEIVED AN ELECTRONIC TRUST DEPOSIT "BY MISTAKE"?

THE LAW SOCIETY has learned that an electronic deposit scam has occurred in another jurisdiction. It works something like this. A law firm receives a call from a company's representative that a large deposit was made electronically to the law firm's trust account by mistake. The caller asks the law firm to repay the company.

If you receive such a call, immediately contact your financial institution for a full investigation. The sender should deal directly with your financial institution rather than with your firm.

You will want your financial institution to determine who originated the electronic deposit, how and where it was made. Keep in mind that not all electronic transfers are the same; ask whether the transfer occurred via an irrevocable large value transfer system (LVTS) deposit or through a revocable transfer. Ask for your financial institution to keep you informed as to whether the deposit was genuine or a fraud and to follow up with a reporting letter so that you have a clear record for your future reference and for your next Law Society audit.

### FICTITIOUS LAWYERS AND OTHER TWISTS TO THE PHONY DEBT COLLECTION SCAMS

Be alert for new twists to the prevalent phony debt collection scams against lawyers. A subject of previous Practice Watch articles and Notices to the Profession, the scams started out in the business context and later appeared in the matrimonial context.

**What is the object of these scams against lawyers?** The fraudster is trying to get money from your trust account before you learn the truth. When a lawyer enters into a dialogue with the scamster, the lawyer may receive a payment through a well-made but fake or forged instrument (e.g. fake bank draft, fake certified cheque or stolen cheque with a forged signature). This often occurs before the lawyer receives a retainer or completes the client identification and verification process. The

client pressures the lawyer to deposit the phony instrument into the lawyer's trust account, take a retainer from the amount deposited and wire the balance. If the lawyer wires the funds without waiting for the instrument to clear, the lawyer is out the money.

**What are some new twists to the scams?** Some fraudsters enclose a cheque payable to the law firm in the initial correspondence. Also, in an attempt to appear more legitimate, some fraudsters pretend to be lawyers from another jurisdiction making "referrals" that may include an invitation to contact their phony firm for information. If you receive a referral from a lawyer whom you don't know, check with independent sources such as the lawyer's regulatory body (a Canadian law society or the equivalent in a foreign jurisdiction) to find out if the lawyer exists and is licensed to practise. If the person doesn't exist, you won't accept the referral. If the person does exist and you are interested in the referral, compare the contact information provided by the law society with the contact information from the referring lawyer. Does the information match? If it doesn't match, use caution. Contact the real lawyer using the contact information provided by that lawyer's law society to find out if the lawyer actually did make a referral to you. Appreciate that, while the initial contact in any scam is often by email, it sometimes comes in the way of a phone call or even in person.

Beware if you receive an email from the "Law Office of William Sterns" with a Bangor, Maine address. The Board of Overseers of the Bar in Maine has advised the Law Society that William Sterns is a fictional character and that there never was a lawyer by that name licensed to practise in Maine.

*Here is an edited version of a phony lawyer referral email:*

Good day,

I am an attorney licensed to practice in the state of Maine. I am writing on behalf of a client of mine who is requesting possible representation. I will not be able to represent my

client, K.C. Chen, of ASC Steel Company Limited [the scamster actually inserted the name of a real foreign company here] and I must state that he is a very credible client. I will be away from the office as of [today or an earlier date] and would like you to review this case for a possible representation.

We believe this case is within your jurisdiction, which is why we are requesting your services. I will be away from the office, but you may contact my paralegal for further correspondence [includes email address for paralegal]. I have instructed her to provide you with the contact information for my client to enable you to establish direct communication. Do let us know your position in this case as we look forward to a prompt response from you.

Sincerely,  
William Sterns  
Law Office of William Sterns  
96 Harlow St.  
Bangor, ME 04401-5529  
[includes fake law firm website]

The July 2008 Practice Watch column contained an edited version of the phony debt collection scam in the business context in which the scamster proposed a contingent fee contract.

*Here is an edited version of another type of business debt letter:*

Attention Counselor:

I greet you most respectfully. I am Mr. John Yin, a trade representative of the above company. WIC Limited is a heavy machinery company with its head office in Hong Kong. We require legal representation in connection with our delinquent Canadian customers. We are looking for a reputable attorney to represent us in order for us to recover these monies due to our company. In order to achieve these objectives, a good, methodical and reputable attorney and law firm is required to handle this service for us.

We understand that a property attorney client agreement must be entered into by both parties in a business matter of this nature. Your consideration of our request is highly anticipated and we look forward to your prompt response. .

Yours faithfully,  
Mr. John Yin,  
Trade Representative, WIC Limited  
Email: info@wiccolimited.com



*Here is an edited version of a phony debt collection scam in the matrimonial context:*

Dear Counsel: [may or may not address you by name]

My name is Junko Sakihito. I am contacting your firm in regard to a divorce settlement with my ex-husband, Glen Williams, who resides in your jurisdiction. I have a two-year teaching contract in Asia so I am out of the country for now.

Glen and I had an out of court agreement (Collaborative Law Agreement) for him to pay \$448,450 plus legal fees. A copy of the agreement is attached. He has only paid me \$44,000. I have tried with several failed attempts to collect the balance from him and he seems not to be coming through. My former attorney recently retired so I am seeking your firm's assistance in collecting the balance from him.

He has agreed already to pay me the balance, but it is my belief that a law firm like yours is needed to help me collect the payment from my ex-husband or litigate this matter if he fails to pay as promised. Here is an email address at which you can reach me: [typically a free web-based email address such as Hotmail, Yahoo, or Gmail].

Thank you.

Sincerely,  
Junko Sakihito

**What else can you do to protect yourself from these phony debt collection scams?**

Here are some steps you can take:

1. Abide by the client identification and verification rules (Rules 3-91 to 3-102). Assuming there is a "financial transaction," you must take steps to verify the client's identity in person using reliable, independent source documents, data or information. It is not sufficient for the client to send you a fax or email scan of what the client claims is his or her passport, driver's licence, birth certificate, Nexus card or other form of identification.
2. Be cautious about anyone who contacts you via the Internet. Use telephone books, the Internet and other resources to cross-check names, addresses and telephone numbers to see if they correspond to the information provided. For example, you can use a reverse telephone directory to see if the

number provided to you corresponds to the client's name.

3. Keep in mind that it's easy to make calls look like they are being made from inside or outside of British Columbia. The caller could be phoning you from two blocks away or from another country.
4. Be cautious about emails that do not refer to you by name and use salutations such as "Dear Counsel," "Good day" and "Dear Attorney." However, don't be fooled if a letter does address you by own name. Your name and the fact that you are a lawyer is widely available information.
5. The fraudster may enclose a "collaborative law agreement" purportedly signed by the client and the opposing party and witnessed by lawyers. Collaborative law agreements are easily obtained from websites. Ask the client for permission to contact the lawyers

*continued on page 17*



*The lawyers at Valkyrie Law Group, left to right: Sonia Sahota, Gwendoline Allison, Andrea Frisby, Rina Thakar, Lynn Khng, Holman Wang, Sandra Carter and Pamela Jefcoat.*

## The real world of virtual law firms

PAM JEFCOAT AND the seven other lawyers in her BC firm have regular meetings, work on documents together, have annual retreats and gather for summer and Christmas parties.

"We practise just like any small firm would practise," said Jefcoat, "it's just that we don't have an office."

Valkyrie Law Group is entirely virtual. There is no downtown Vancouver office with plush furniture and glamorous art in the reception. There are no assistants, no paralegals, no corporate services department and no law library.

"We joke that we have eight offices in the lower mainland to serve you better," said Jefcoat with a broad smile on her face. But the reality is that those eight offices are not for clients. Each lawyer works from home.

Valkyrie Law is part of a growing national and global trend. In 2009 the Canadian Bar Association estimated lawyers in nearly every province have embraced the virtual office idea.

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*"I already used the phone and email all the time. It's just that now I don't commute and do committee meetings every night." – Pam Jefcoat*

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When Jefcoat and two of her current partners founded their firm in March 2009, the three didn't research virtual law offices. At the time they were practising at a large downtown Vancouver firm.

"The virtual model was primarily driven by the economics of it and the desire

for autonomy and flexibility — all of us wanted to work from home," said Jefcoat. "When we were deciding how we wanted to set up, we considered what would be the most cost effective for clients. This was particularly important for us because we act for municipalities and, of course, it's taxpayers' dollars."

Valkyrie limits its practice to municipal and First Nations law. Jefcoat said her practice style didn't change when she founded the firm.

"I already used the phone and email all the time. It's just that now I don't commute and do committee meetings every night. Our clients very rarely came into Vancouver to see us at the office so it was almost like we were already practising that way. We act for clients all over the province. They're used to us travelling to see them."

Even though the way she interacted with her clients remained largely the same, other aspects of her practice changed significantly. "I'm making more than I would have at the larger firm and working less." At the downtown firm where she gave up being a partner, Jefcoat regularly worked 10 hour days and weekends. She now works about 40 hours a week, including doing her own non-billable administrative work.

Her client base has also doubled since Valkyrie's inception a year and a half ago. "Our clients love it," said Jefcoat. "First of all they love it because one of the advantages of no overhead is that we were able to reduce our rates by about 20 percent."

"There's an environmental aspect to it as well," added Jefcoat. "Local governments are in a position where they're encouraged

to reduce their environmental foot print. We don't commute. We don't have an office, and so our impact on the environment is less, and I think that's something that local governments appreciate."

But despite a long list of positives, Jefcoat warns this type of practice may not work for everyone.

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*"Our clients love it ... we were able to reduce our rates by about 20 percent." – Pam Jefcoat*

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"I would temper the fact that you do get the flexibility and you are at home with the fact that you have to be fairly disciplined to make it work. Some may find it isolating not being in an office environment. So it may not be a model in which everyone would want to practise, and especially at the very early stages, as training is a bit of a different issue, as well."

There are several other crucial considerations for lawyers considering a virtual law office, according to lawyer Barbara Buchanan, a Practice Advisor at the Law Society of BC.

"Some lawyers are so keen on the technology and reducing overhead by having a 'virtual law firm' that they are not putting their minds to the professional responsibility issues regarding confidentiality, conflicts, client identification and verification, determining mental capacity of the client

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*continued on page 14*

*Virtual law firms ... from page 13*

to instruct, undue influence over the client and so on.”

Depending on the firm and type of practice, the virtual law office may not lend itself to good practice. “Just because technology makes things easy to set up doesn’t mean it’s easy to properly discharge your obligations to your clients,” said Buchanan.

Lawyers considering this model need

to think through the advantages and disadvantages and have client security and service as a paramount consideration. “In terms of confidentiality, if clients are logging onto the firm’s website to exchange information then lawyers need to consider the site’s security, among other things,” advised Buchanan. “They need to protect it from hackers and fraudsters. Ideally their server should be in their office and, if not, they need a major provider with an air tight confidentiality agreement — not just

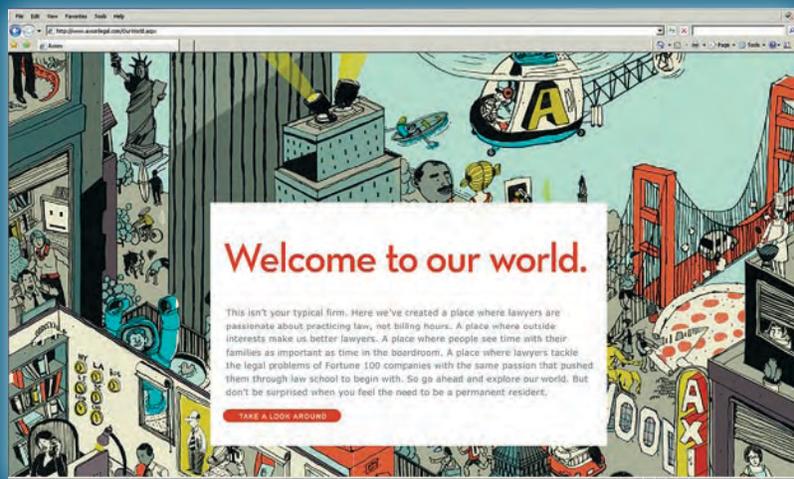
a server in their garage. If your server is an American one there is a significant risk to the security of your clients’ information, because the US government could invoke the *USA PATRIOT Act*.”

In addition, Buchanan reminds lawyers that client identification and verification rules need to be considered. “Is the person emailing you really who they say they are? Verification of identity can’t be done

*continued on page 16*

## Some notes on the virtual law firm

- Wikipedia credits an English lawyer with setting up the first recorded virtual law firm in 1996.
- There are several in the United States, including one based in New York — Axiom — that was founded in 2000 and now boasts nearly 300 lawyers.
  - Axiom’s website ([axiomlegal.com](http://axiomlegal.com)) claims clients such as Cisco, Yahoo!, Google and NBC.
- There are competing definitions of what constitutes a virtual law firm:
  - some argue it simply means an affiliated group of lawyers connected by technology rather than co-existing in common physical locations, and that they may still have traditional offices;
  - the American Bar Association Law Practice Management Section’s eLawyering Task Force defines a “virtual law practice” as one that offers its clients a secure client portal, as part of the law firm’s website, where the client can log in with a user name and password, and interact with an attorney, as well as consume other online legal services.
- Some bloggers argue that virtual law firms aren’t new and that for years, lawyers have gone to clients’ offices instead of their own, communicated with colleagues and clients on a daily basis by telephone, fax machine and snail-mail.
- The 2010 ABA Legal Technology Survey Report states 19 per cent of sole practitioners report having a virtual law practice. (Some bloggers believe that number is inflated because of the way the question was asked, but there is general consensus that the trend is on the rise.)
- In the US, the ABA advocates “eLawyering” initiatives to reach lower and middle-class citizens in need of legal services.
- The 2009 winner of the ABA’s annual James Keane Memorial Award for excellence in eLawyering was Stephanie Kimbro, a



*The “virtual world” of Axiom law, a firm with lawyers around the world, as portrayed on its website.*

woman who founded a sole practitioner virtual law office in North Carolina: [kimbrolaw.com](http://kimbrolaw.com)

- Kimbro has blogged that her website was programmed so that potential clients send her legal questions over an “https” website, “which is more secure than email. I have an administrative backend to the site that allows me to organize everything from checking for conflicts of interest to where my referrals come from. I send the potential client a price quote for the service and if they accept it, they pay online and then I post or upload whatever legal service they requested.”
- The ABA’s eLawyering Task Force fully embraces technology and legal practice on its website, saying: “There are great dangers, but also great opportunities for attorneys in the coming decade. To be successful in the coming era, lawyers will need to know how to practice over the Web, manage client relationships in cyberspace, and ethically offer ‘unbundled services.’”

## The Law Society and virtual firms

A NON-TRADITIONAL SETTING does not change the professional and ethical duties lawyers owe their clients.

Dave Bilinsky, a Practice Management Advisor at the Law Society and founder and Chair of the Pacific Legal Technology Conference, believes “technology is pushing the envelope on practice in ways that may not always be compatible with the traditional professional conduct attributes of the profession, which were really developed in a paper, ink and physical desk environment.” Bilinsky advises lawyers who are considering moving into the world of cyberlaw to contact the Practice Advice Department if they have concerns or questions about how to meet their obligations to their clients.

It is important for any lawyer considering a virtual law firm to recognize that the standards and risks surrounding virtual firms are evolving, as is the technology that enables them. The attractions of virtual firms must be balanced by consideration of their limitations. Lawyers must ensure they are meeting their obligations in accordance with the Law Society Rules, *Professional Conduct Handbook* and the law. Some important considerations include:

- lawyers should apply the same scrutiny to the risks they manage in a physical office and recognize the heightened risks of connecting to a network;
- as with traditional firms, client information must be secure and confidentiality maintained (see Chapter 5 of the *Professional Conduct Handbook*, regarding confidentiality):
  - if clients are logging onto the firm’s website to exchange information with their lawyers, then the site’s security, among other things, needs to be scrutinized;
  - the site needs to be protected from hackers and fraudsters;

- the server should ideally be in the lawyer’s office, and if not, it should be with a major provider in Canada with an air tight confidentiality agreement that also covers such matters as who owns the stored data, data backup and destruction, etc.;
- if the server is an American one there is a significant risk to the security of the clients’ information, as the US government could invoke the *USA PATRIOT Act*;
- consider the impact of privacy legislation, generally;
- the client identification and verification rules require meeting with the

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*“Technology is pushing the envelope on practice in ways that may not always be compatible with the traditional professional conduct attributes of the profession, which were really developed in a paper, ink and physical desk environment.” – Dave Bilinsky*

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client in person to verify identity, if there is a financial transaction (see Law Society Rules 3-91 to 3-102);

- you must discharge your obligation to ensure the client has the mental capacity to instruct and has not been the subject of undue influence; and
- trust accounting rules require lawyers to store records at their chief place of practice (Rule 3-68).

The Law Society is examining certain aspects of practice that would generally apply to a virtual firm.

### CLOUD COMPUTING

Many virtual firms use what’s called cloud

computing, which involves accessing data processing and storage applications via the internet. Multi-member virtual firms may use cloud computing to, for example, share documents among lawyers.

On September 16, 2010, the Law Society’s Executive Committee struck a working group to:

- look into what rules and policy the Law Society will need for BC lawyers who are using cloud computing and/or remote processing and storing of business records; and
- consider BC lawyers’ use of electronic storage, both in and outside of the province.

### DRAFTING WILLS VIRTUALLY

On September 1, 2010 the Ethics Committee approved an opinion on whether it is proper for a lawyer to draft a will for a client without meeting with the client. The committee stated:

In spite of the fact that a lawyer who drafts a will for a client has significant responsibility for ensuring the validity of the will, it was the committee’s view that the question of whether a lawyer has a duty in all circumstances to meet personally with the client is an issue that relates to the standard of care a lawyer must follow in the drafting and execution of wills, not to the lawyer’s ethical obligations. While a practice of meeting personally with a client in these circumstances is highly desirable and may be required at law, the committee declined to say that a failure to do so in every circumstance necessarily amounts to professional misconduct.

The committee’s full opinion will be published online in the annotated *Professional Conduct Handbook*, but before its publication, it can be obtained from Jack Olsen, staff lawyer for the Ethics Committee, by emailing him at [jolsen@lsbc.org](mailto:jolsen@lsbc.org).



*Virtual law firms ... from page 14*

without meeting with the client in person.” (See Law Society Rules 3-91 and 3-102.) “There are a number of risks to consider. So as you can see, it’s not as easy as it sounds to conduct your practice properly entirely over the computer,” advised Buchanan.

Jefcoat said that she and her partners at Valkyrie considered that practising law in a non-traditional way doesn’t negate lawyers’ obligations to consider traditional issues. She said the three founding partners began by taking the Law Society’s small firm course and scouring the Rules.

“We did all of our due diligence. All of that stuff that is just done for you miraculously by virtue of being in a large firm, we had to figure out, such as, what are

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*“Just because technology makes things easy to set up doesn’t mean it’s easy to properly discharge your obligations to your clients.” – Barbara Buchanan, Law Society Practice Advisor*

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our insurance requirements, requirements for document storage, limitation periods? Anyone considering this needs to do their homework,” Jefcoat cautioned.

Even with the additional considerations of practising virtually, Jefcoat’s firm has attracted more lawyers. They’ve grown from three to eight. The firm has an all-equity partner model. They share the profits and loss based on a proportional points system they’ve created for each other. One

of the partners to join this year is Andrea Frisby.

She left the same large downtown firm that Jefcoat did. “I like this kind of brighter colour work,” said Frisby. “You’re closer to the front line and that’s exciting. I like getting my fingers into stuff that at the big firm I would have been decades away from getting to touch.”

She experienced additional immediate benefits. “Personally, I’m saving three hours a day commuting, so I can work more hours a day and be less fatigued.”

Both Frisby and Jefcoat have young children. While they say their big firm lifestyles allowed them to maintain their families as priorities, both believe there have been important advantages to working from home.

“I do enjoy being more a part of her life than I was when I was working downtown,” said Jefcoat of her four-year-old daughter. “You’re not commuting, so you save so much time after work and before work. You can have breakfast together. You’re home for dinner. There’s that flexibility there and a sense of security when your child knows you’re home. That wasn’t a motivating factor when I left, but it’s certainly been a wonderful byproduct of the system that we’ve chosen.”

Frisby said, for the first time ever, she was able to take her nine-year-old daughter to the first day of school. While Frisby enjoys that flexibility, there are other aspects of her new practice that equally excite her.

“We are on the leading edge of business. I think this kind of law practice and this model is where law is going. I think the big firm and big offices is where it’s been. We are equally serious about our brand and professionalism.”

“This is a recession model in a way,” said Frisby. “You’re cutting costs for the client and the big footprint of staff and overhead. You’re cut to the bone and it makes you more dynamic. I think this kind of service is going to gain momentum. A lot of people in this generation are really comfortable with conferencing on-line and other technology.”

Jefcoat agrees. “It’s an easier practice for the younger generation to adapt to because we’re already tech-savvy. The bulk of us are in our 30s and 40s and most of us had laptops in law school to type our notes in class. The younger generation of lawyers tends not to use assistants as much. We don’t dictate and we draft directly onto the computer.”

Nevertheless, Jefcoat believes the big firm will always have its place. “I did start in a big firm and you learn a lot by just being among so many lawyers.” Frisby also believes her big firm training was invaluable. Further, she believes Jefcoat and the other two Valkyrie founders are “pioneers.”

Jefcoat responded with a laugh. “I would have never called myself that. Maybe a little bit in terms of this style of practice.”

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*“I think this kind of law practice and this model is where law is going. I think the big firm and big offices is where it’s been.” – Andrea Frisby*

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Jefcoat said that aspect of forging new ground made the decision to go virtual difficult. “We had a lot of sleepless nights. We didn’t have anyone we could talk to who was doing it and could give us the pros and cons. I’d been happy at my firm for 10 years, and leaving something where you’re not discontent is difficult. You’re leaving a complete known for an unknown. But it was one of those opportunities in life that I thought I’d kick myself if I didn’t try it.”

And she believes many more will try it. Still, Jefcoat stops short of seeing virtual law offices as the widespread future of law.

“I’m not sure that it translates to everybody’s practice, depending on the nature and type of work that you’re doing and how reliant you are on the resources of a big firm,” Jefcoat said. “The virtual firm blends well with our practice, because the type of practice we have is largely opinion, document review or contracts. It’s less transactional. We’re very fortunate that we don’t need bricks and mortar for our practice. That probably won’t work for everyone.” ❖

*Fraudsters ... from page 11*

- who witnessed the agreement. Also, if the opposing party has counsel, you shouldn't contact the opposing party directly anyway.
6. Be suspicious. Why did the client ask you to act? Does it make sense that a stranger from England, Italy, Hong Kong, Japan, the US or China would ask you to collect their money?
  7. Ask yourself whether the client is willing to pay you too much money for little or no work.
  8. If the client says that they were referred by a lawyer, accountant or someone else, ask if you can contact that person. You will want to thank the person for the referral if it's true. If a lawyer actually did make the referral, you may find that lawyer does not actually know the client but referred the client to you because the lawyer doesn't practise family law or civil litigation.
  9. Get to know your financial institution's representatives before you have problems so that they know you. Discuss the differences in receiving payments by wire transfer, certified cheque or bank draft. Be familiar with your institution's policies and your banking agreements, especially with respect to the security measures that protect your firm's accounts.
  10. If you receive a certified cheque or bank draft, take it to your financial institution and ask your representative to verify that it's legitimate. They can contact the financial institution on which the instrument was drawn and ask probing questions. If you deposit the instrument, wait for the funds to clear before paying out. Ask your financial institution to confirm with the institution that issued the instrument that the funds have cleared. This reduces the risk, but may not eliminate it completely.
  11. If the new client is a business that provides a link to its website, check that the business name is an exact match with the name used in the website. Sometimes a fraudster provides a website address that belongs to a business with a similar, but not identical name.
  12. Don't respond to obvious scam emails, even to say that you know it's a scam. Sometimes fraudsters send you a follow-up email if you don't respond the first time. If you respond, you alert the sender that he or she has found a viable address. That can lead to other problems.
  13. Make sure that the lawyers and staff in your firm are familiar with the common types of scams that target lawyers.
  14. Two Canadian websites that you can view to inform yourself generally about scams and new trends are [fraudcast.ca](http://fraudcast.ca) and [phonebusters.com](http://phonebusters.com). PhoneBusters is the Canadian Anti-fraud Call Centre, an organization jointly managed by the Ontario Provincial Police, the RCMP and the Competition Bureau of Canada. The Criminal Intelligence Analysis Unit analyzes scams and, if appropriate, may disseminate the information to law enforcement agencies and regulatory bodies both inside and outside of Canada.
  15. If someone has scammed you, report it to the RCMP or to your municipal police force. You can also report a fraud to the Canadian Anti-Fraud Centre at:  
Canadian Anti-Fraud Call Centre (PhoneBusters)  
Toll-free: 1-888-495-8501  
Toll-free fax: 1-888-654-9426  
Email: [info@phonebusters.com](mailto:info@phonebusters.com)  
Website: [phonebusters.com/english/reportit.html](http://phonebusters.com/english/reportit.html)
  16. For more tips to help you recognize and manage the risk of becoming a tool or dupe, read materials published by the Law Society.  
See Practice Watch (May, July, October, and December 2008; April, Summer, Fall, and Winter 2009; Spring and Summer 2010 *Benchers' Bulletins*), Notices to the Profession and *Insurance Issues: Risk Management* in the Publications & Forms section of the Law Society website at [lawsociety.bc.ca](http://lawsociety.bc.ca).
  17. If you suspect that a new client may be a scamster and you would like confidential practice advice, you are welcome to contact Barbara Buchanan, Practice Advisor, at [bbuchanan@lsbc.org](mailto:bbuchanan@lsbc.org) or 604-697-5816 or another practice advisor.

## DO YOUR SYSTEMS PROTECT YOU FROM EMPLOYEE FRAUD?

When you hire new employees, are you calling their references? Are the references even real? Have you ever done a criminal records check? You may do all of these things with new employees; however, in many cases it's the long-term employee, the one who is intimately familiar with your accounts, systems, passwords and signature, who ends up stealing from a firm.

Someone I know was shocked that his bookkeeper of 10 years had been stealing from his general account for the past couple of years. The amount stolen was in the six-figure range. Other employees had noticed that the bookkeeper was wearing more expensive clothes, seeing a manicurist on a weekly basis and had bought property in a foreign country. For some time, the employer was only aware that invoices were being paid later and later and the business had less money. Eventually the employer hired an outside investigator and the situation came to light.

**What can you do to protect yourself from employee fraud?** Some of the things that you could do include:

- Perform reference checks and background checks (e.g. employment verification, education verification, criminal background check, credit bureau) before hiring new employees who will have access to financial and other sensitive information.
- Be alert to changes in lifestyle, particularly if an employee seems to be living beyond her or his means or shows signs of substance abuse or depression.
- Watch out for phony invoices or excessive payments made to one vendor; payments may be made to businesses that did not perform any services or supply any products.
- Establish a policy that blank cheques may not be signed.
- Store trust cheques securely.
- Keep sensitive passwords secret.
- Separate office functions so that one employee is not responsible for all accounting, bookkeeping and banking.

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FROM INTERLOCK, a division of PPC Worldwide

## IQ gets you hired, EQ gets you promoted

by Phil Campbell, M.Ed. RCC, Counsellor-Coordinator

*"It is very important to understand that emotional intelligence is not the opposite of intelligence, it is not the triumph of heart over head — it is the unique intersection of both." — David Caruso*

**LAWRENCE** IS INTELLECTUALLY gifted. He has a mind like a steel trap and can quote cases, facts and information at will. He can provide a brilliant list of pros and cons for any given course of action, theory or plan, but you can't pin him down on an opinion. At a restaurant he is as likely to say, "I'll have what she's having," as he is to make his own decision. Nobody knows his political or spiritual beliefs — if he has any — and his career is a long story of missed opportunities and apparent bad luck. He shows great promise, but seldom comes through.

**Noreen** is also exceptional, but has been able to translate her gift into considerable success. Her partners value the ways in which she has helped the firm grow, but are increasingly concerned about the impact of her behaviour on her co-workers. For example, she makes unreasonable requests of staff and puts great pressure on them to give her work priority over everyone else's. She is also contemptuous of colleagues and never admits to a mistake or flawed strategy, no matter how clear the evidence. A junior partner left the firm saying, "It was her or me, and I knew it wasn't going to be her." Every assistant she has had asked to be reassigned. Her behaviour has been overlooked to date.

**George** doesn't mind telling you that he graduated in the bottom half of his class and jokes that 50 per cent of all lawyers have done likewise. While he was well liked at school, nobody really thought he would amount to much. And yet his enthusiasm is contagious. He constantly assesses his own

performance while striving for excellence. He is committed to his work and willing to take a lesser role if it is in the best interests of the firm. People seek him out for advice on strategy or conflict resolution tactics. He has a way of making you feel listened to and cared about. At the same time he has clear personal boundaries around what he can and cannot do for you. George is well respected within the firm and recently survived a round of downsizing.

Lawrence and Noreen are lacking in emotional intelligence (EQ).

Lawrence cannot make a decision.



Analysis comes from the thinking mind, but decisions cannot be made without access to the emotional mind.

Noreen lacks control of negative emotions and has poor interpersonal connections. Her vision is narrowed around her immediate self-interest rather than seeing her actions as being in a larger context. In the end, she may actually be acting against her own best interests, as others eventually feel forced to hold her accountable.

George, on the other hand, appears to be progressing competently with his career. His success in his position is beyond what was anticipated, given his grades. He

is valued by his organization, thoroughly enjoys his work, is motivated and motivates others.

Author Daniel Goleman was surprised by the response from the business community to his landmark book, *Emotional Intelligence*. Business leaders reinforced Goleman's position that technical expertise alone was not enough for excellence in the workplace. These leaders all knew employees who were technically proficient — even brilliant — but who left a path of destruction behind them because of their emotional ineptitude. On the other hand, they also witnessed employees who contributed far beyond their technical expertise because of their intuition and interpersonal awareness. This overwhelming response prompted Goleman to research and write his follow-up book, *Working With Emotional Intelligence*.

Today, neuroscience clearly shows that the emotional part of the brain operates very differently from the cognitive or thinking part of the brain. Emotionally intelligent people are able to effectively integrate both parts of their brain.

Research has proven that EQ is a strong predictor of career success, particularly at the executive management level.

EQ is the ability to understand our emotions and those of others. It includes our ability to express our emotions appropriately in our interactions with others.

According to Goleman, EQ is composed of a number of key behaviours, which include:

- Self-discipline

Researcher Anders Ericsson found that world-class performance in any discipline comes from continuous repetitive

practice. It takes about 10,000 hours of persistent, focused training and experience to achieve this type of status. Those who develop the capacity to persist are more likely to achieve excellence.

- Delay of gratification

Research has shown that children who are able to delay gratification at an early age are more able to cope with stress as adults. Adults who have learned to delay gratification tend to be assertive and are better able to manage life's difficulties.

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*These leaders all knew employees who were technically proficient — even brilliant — but who left a path of destruction behind them because of their emotional ineptitude. On the other hand, they also witnessed employees who contributed far beyond their technical expertise because of their intuition and interpersonal awareness.*

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- Optimism

Martin Seligman, author of the book *Learned Optimism*, found that optimism in freshman college students was actually a better predictor of their grades than their SAT scores. Goleman points out that, in the workplace, they also persist in pursuing goals despite obstacles and setbacks.

- Empathy

Empathy is an awareness of the feelings of others and a concern for them. US President Barack Obama, when searching for a nominee for Supreme Court justice, said he wanted to find a judicial leader with empathy. He said that this was a key factor in his choice of Sonia Sotomayor for the position. In the workplace, empathy is a powerful tool for building consensus, networking and understanding the needs of clients and co-workers.

Goleman divides EQ into two categories: personal competence and social competence. Here are the basic skill sets he points to:

### Personal competence

- Self-awareness

Self-confidence tempered by an accurate assessment of one's own strengths and limitations. An awareness of one's own emotions and their impact on others.

- Self-regulation

The ability to manage one's own emotions. Trustworthiness, conscientiousness, adaptability and innovation are all also included in the self-regulation subset.

- Motivation

Optimism, a drive for excellence, commitment to the group or organization and personal initiative.

### Social competence

- Empathy

Taking an active interest in the concerns of others by sensing their feelings and perspectives and supporting them. It also includes political awareness, service orientation and the ability to leverage diversity.

- Social skills

The ability to communicate convincingly and persuade effectively. People with effective social skills are able to lead by inspiring and guiding others, building bonds, collaborating, cooperating, and creating and motivating teams. They are also change catalysts.

Perhaps the best news about EQ is that it can be learned. Lawrence could, if he so chose, get in touch with his own value set so that he has a measure by which to make decisions. He may also have to deal with his fear of getting it wrong.

Noreen could learn the value of developing different perspectives and positively motivating others.

All of us could learn from George so that we maximize the potential we have — whatever that may be.

We live in an era when cradle-to-grave employment is a thing of the past and instability is the order of the day. The skill set that comes with EQ can give you an edge in the workplace and give you the personal resilience to survive and thrive. ❖

## Services for lawyers

### Practice and ethics advisors

**Practice management advice** – Contact David J. (Dave) Bilinsky, Practice Management Advisor, to discuss practice management issues, with an emphasis on technology, strategic planning, finance, productivity and career satisfaction. Email: daveb@lsbc.org Tel: 604-605-5331 or 1-800-903-5300.

**Practice and ethics advice** – Contact Barbara Buchanan, Practice Advisor, Conduct & Ethics, to discuss professional conduct issues in practice, including questions about client identification and verification, scams, client relationships and lawyer/lawyer relationships. Tel: 604-697-5816 or 1-800-903-5300 Email: advisor@lsbc.org.

**Ethics advice** – Contact Jack Olsen, staff lawyer for the Ethics Committee to discuss ethical issues, interpretation of the *Professional Conduct Handbook* or matters for referral to the committee. Tel: 604-443-5711 or 1-800-903-5300 Email: jolsen@lsbc.org.

*All communications with Law Society practice and ethics advisors are strictly confidential, except in cases of trust fund shortages.*



**Interlock Assistance Program** – Confidential counselling and referral services by professional counsellors on a wide range of personal, family and work-related concerns. Services are funded by, but completely independent of, the Law Society and provided at no cost to individual BC lawyers and articulated students and their immediate families. Tel: 604-431-8200 or 1-800-663-9099.



**Lawyers Assistance Program (LAP)** – Confidential peer support, counselling, referrals and interventions for lawyers, their families, support staff and articulated students suffering from alcohol or chemical dependencies, stress, depression or other personal problems. Based on the concept of "lawyers helping lawyers," LAP's services are funded by, but completely independent of, the Law Society and provided at no cost to individual lawyers. Tel: 604-685-2171 or 1-888-685-2171.



**Equity Ombudsperson** – Confidential assistance with the resolution of harassment and discrimination concerns of lawyers, articulated students, articling applicants and staff in law firms or other legal workplaces. Contact Equity Ombudsperson, Anne Bhanu Chopra: Tel: 604-687-2344 Email: achopra1@novuscom.net.

FROM THE CREDENTIALS COMMITTEE

## PLTC students' collaboration

THE CREDENTIALS COMMITTEE recently considered the conduct of two pairs of Professional Legal Training Course students who acknowledged that they had engaged in prohibited collaboration on two of the written PLTC assessments.

The first set of PLTC students acknowledged the collaboration and advised that they did not set out to cheat, but admitted that they started by discussing the assessments generally and that this progressed to more specific discussions. The students expressed regret for their collaboration and assured the committee it was an isolated incident.

The second set of PLTC students explained that they had worked together since the beginning of their course preparing for class exercises and assignments and fell into the same pattern for assessments. Both students took responsibility for their actions.

In both instances, the Credentials Committee reviewed the performance of the students on the other PLTC assessments and examinations as well as their

explanations of how they came to be involved in the collaboration. The committee also considered how important it is to the PLTC program that the students not engage in plagiarism or collaboration on assignments, assessments or examinations.

In the circumstances, the committee decided that each student's enrolment in the Law Society Admission Program would be extended by three months. Further, each student would be required to re-do the two written assessments and that each must write an anonymous memorandum to be shared with future PLTC students.

In the memorandum, each student will detail his or her own experience, from detection of the collaboration to the conclusion of this matter by resolution of the Credentials Committee, and how he or she was affected by the process. In addition, the committee decided that the students be the subject of an anonymous publication in the *Benchers' Bulletin* detailing their actions and the committee's decision. ❖

FROM THE MINISTRY OF ATTORNEY GENERAL

## Parenting After Separation program

THE PARENTING AFTER Separation (PAS) program will expand on October 1, 2010 to four new mandatory PAS sites (Campbell River, Courtenay, Penticton and Vernon) in the Provincial Court. In addition, the Ministry of Attorney General is promoting voluntary participation in PAS for Supreme Court litigants.

These free, three-hour sessions are offered in 17 locations in BC and help separating and divorcing parents ensure their decisions take into account the best interests of their children. Sessions also inform parents very generally about the litigation process and about non-adversarial options for resolving issues involving children.

The program has been offered for more than 12 years by the Ministry of Attorney General. Evaluations show: participants are very satisfied with the program; fewer cases proceed to court as a result of attending a session; and cases that do proceed to court resolve with fewer appearances.

For more information, see the website at [www.ag.gov.bc.ca/family-justice/help/pas/index.htm](http://www.ag.gov.bc.ca/family-justice/help/pas/index.htm). ❖

*Fraudsters ... from page 17*

Keep involved!

- If you are a sole practitioner who will be away for the office for vacation or illness, arrange for a locum to monitor your files and staff during your absence. (See Practice Support / Locums on the Law Society website, or log in as a member for the locum registry.)
- Obtain professional advice regarding your insurance needs.
- Retain a consultant to review your internal controls.
- Abide by the rules for supervision of employees set out in Chapter 12 of the *Professional Conduct Handbook*.

- Review the *Trust Accounting Handbook* on the Law Society's website (Trust Assurance / Trust Accounting page), especially Accounting Alert! (pages V-5 to V-6), and the Internal Control Checklist and the Common Deficiencies Checklist (Appendix A).
- Contact a Trust Assurance Auditor ([trust-accounting@lsbc.org](mailto:trust-accounting@lsbc.org)) or a practice advisor for further assistance.

### BANKS REFUSING TO ACCEPT LAWYERS' TRUST CHEQUES FOR DEPOSIT?

Some lawyers have reported that banks are refusing to accept a lawyer's trust cheque for deposit unless it's certified. A lawyer may ask for your cooperation in

having your trust cheque certified. Unless funds are to be paid under an agreement that specifically requires another form of payment or payment by another person, a lawyer must not refuse to accept another lawyer's uncertified cheque for the funds. However, it is not improper for a lawyer, at his or her own expense, to have another lawyer's cheque certified (Chapter 11, Rule 8 and footnote 1, *Professional Conduct Handbook*).

### FURTHER INFORMATION

Contact Practice Advisor Barbara Buchanan at 604-697-5816 or [bbuchanan@lsbc.org](mailto:bbuchanan@lsbc.org) for confidential advice or more information regarding any items in Practice Watch. ❖

# Discipline digest

Please find summaries with respect to:

- Christin Priscille Marcotte
- John Lawrence Chipperfield
- Donald Alexander Boyd
- David William Blinkhorn – addendum

For the full text of discipline decisions, visit the Regulation & Insurance / Regulatory Hearings section of the Law Society website.

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## CHRISTIN PRISCILLE MARCOTTE

Abbotsford, BC

Called to the bar: August 31, 1990

Discipline hearing: June 30, 2010

Panel: David Renwick, QC (single Bencher panel)

Report issued: August 3, 2010 (2010 LSBC 18)

Counsel: Jaia Rai for the Law Society and Christin Priscille Marcotte on her own behalf

### FACTS

The Law Society received complaints about Christin Priscille Marcotte from a client, a former client and another party. In the course of its investigations, Law Society staff made numerous attempts to obtain Marcotte's response to the complaints, by phone, letters and a personal visit. Marcotte either did not respond or did not address the issues raised in the complaints. She failed to provide materials requested by the Law Society, which included ledgers, files and other supporting documents.

### VERDICT

The panel was satisfied that the evidence established that Marcotte's conduct amounted to professional misconduct. She was given ample opportunity to respond to the complaints. Although she was going through a difficult time, she did not provide any specific, meaningful explanation as to why she failed to respond.

### PENALTY

Although this was Marcotte's first citation, the panel found her professional conduct record was a significant aggravating factor. She had two conduct reviews for breach of undertaking, three conduct reviews related to procrastination and delay in handling of client matters; and a practice standards review resulting in her agreement to not practise in the area of wills and estates.

The panel noted that the issue of three complaints during the same time period, and no response having been provided, was another factor.

The panel ordered that Marcotte pay:

1. a \$2,750 fine; and
2. \$2,400 in costs.

Marcotte was also ordered to provide a substantive response to the Law Society concerning the three complaints.

## JOHN LAWRENCE CHIPPERFIELD

Surrey, BC

Called to the bar: June 29, 1972

Discipline hearing: August 10, 2010

Panel: Gavin Hume, QC, Chair, Peter Lloyd and Robert McDiarmid, QC

Report issued: August 31, 2010 (2010 LSBC 20)

Counsel: Eric Wredenhagen on behalf of the Law Society and John Lawrence Chipperfield on his own behalf

### FACTS

John Lawrence Chipperfield failed to respond to Law Society letters regarding three complaints made against him.

Chipperfield's explanation to the panel was that he had raised privilege issues in an earlier Law Society inquiry relating to a trust audit of his practice, which were essentially the same reasons he had for failing to respond to the letters regarding the complaints. He stated that any response would require disclosure of privileged matters. He had previously refused to disclose those matters, and he felt he was placed in double jeopardy by being asked to respond to the complaints.

Although the panel did not need to decide whether disclosure of requested materials breached privilege, as Chipperfield contended, it suggested that he may be confusing principles of solicitor-client privilege in private legal disputes with those applicable within the regulatory scheme of the *Legal Profession Act*. The panel also noted that most of the questions in the Law Society's letters did not appear to require disclosure of privileged matters. Noting that a persistent failure to respond to Law Society correspondence places a persuasive burden on the respondent to excuse that conduct, the panel decided that Chipperfield did not satisfy that burden.

### VERDICT

The panel found that Chipperfield had professionally misconducted himself.

### PENALTY

The panel ordered that Chipperfield pay:

1. a \$1,000 fine; and
2. \$2,000 in costs.

The panel also ordered Chipperfield to respond to the questions posed by the Law Society in its correspondence. The panel suggested that, in his response, he identify those portions of the documents that, in his view, have a solicitor and client privilege attached to them so that he can take the matter up before the Courts if he so desires.

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## DONALD ALEXANDER BOYD

Surrey, BC

Called to the bar: December 19, 1985

Discipline hearing: July 21, 2010

Panel: David Renwick, QC (single Bencher panel)

Report issued: September 9, 2010 (2010 LSBC 21)

Counsel: Maureen Boyd for the Law Society and Leonard Doust, QC for Donald Alexander Boyd

## FACTS

In February 2005, Boyd's adult son entered into a pre-sale contract to purchase a condominium. The son assigned his interest in the contract of purchase and sale of the condominium to his mother, Boyd's former wife, to enable her to handle the purchase for him.

Boyd's former wife arranged financing for the purchase of the condominium by obtaining a mortgage from the bank on her own property. Boyd represented his former wife in the purchase of the condominium and the mortgage of her existing property. He also represented the bank.

The bank instructed Boyd to prepare and register a first mortgage on the existing property. On March 10, 2008, Boyd received the mortgage proceeds, which he deposited to his trust account. On March 13 and 14, he disbursed the funds to complete the purchase of the condominium and paid the bank for the outstanding amount of the prior mortgage.

At the end of March or the beginning of April 2008, Boyd ceased to act for the bank in respect of the new mortgage, without carrying out the instructions of the bank. He did not advise the bank that he was withdrawing his services, that his former wife had not executed any mortgage documents, or that he had disbursed the mortgage proceeds.

## ADMISSION AND PENALTY

Boyd admitted that he released the mortgage funds without first obtaining and registering a mortgage against his former wife's property as security, contrary to the bank's instructions. He further admitted that he failed to report to the bank that he had not secured its position, by releasing the mortgage funds without first obtaining and registering a mortgage against the property of his former wife.

Boyd admitted that his conduct constituted professional misconduct.

The misconduct in this case ultimately caused no financial harm, but did create a significant risk of harm for the client. He abandoned the bank and the obligations he owed to it as its solicitor. Further, when the bank wrote several letters to Boyd in early 2009 requesting a title report and duplicate registered mortgage, he did not reply to those letters.

The panel noted that Boyd did not receive any gain or benefit from his misconduct.

An aggravating factor was Boyd's professional conduct record, which consists of two conduct reviews in 1993 and 2006 and a referral to the Practice Standards Committee in 2006.

The panel determined that there was little likelihood of any reoccurrence as Boyd did not practise real estate law. His involvement was unique to the circumstances, and therefore there was no need to deter him.

The panel accepted Boyd's admission and ordered that he pay:

1. a \$3,500 fine; and
2. \$2,000 in costs.

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## DAVID WILLIAM BLINKHORN – ADDENDUM

The following is an addendum to the discipline digest in the Summer 2010 *Benchers' Bulletin*.

Facts: David William Blinkhorn admitted, and the panel found, that he had committed professional misconduct. The panel further found that he breached the Law Society Rules in failing to keep proper trust accounting records.

The panel ordered that Blinkhorn be disbarred and pay \$37,000 in costs.

## TRUST PROTECTION COVERAGE

The BC legal profession provides financial protection to members of the public whose money has been stolen by a lawyer. If a claim is made against a lawyer relating to the theft of money or other property, Trust Protection Coverage (TPC) is available under Part B of the lawyer's insurance policy to reimburse the claimant, on the lawyer's behalf, for the amount of the loss.

Based on the circumstances described in paragraph [3](2) of *Law Society of BC v. Blinkhorn*, 2009 LSBC 24, a TPC claim was made against David William Blinkhorn and the amount of \$40,746 paid. This is in addition to the claim reported in the Summer 2010 Discipline digest. Blinkhorn is obliged to reimburse the Law Society in full for the amounts paid under TPC.

For more information on TPC, including what losses are eligible for payment, see Regulation & Insurance / Trust Protection Coverage on the Law Society's website at [lawsociety.bc.ca](http://lawsociety.bc.ca). ❖

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## Unauthorized practice of law

Under the *Legal Profession Act*, only trained, qualified lawyers may provide legal services and advice to the public. Further, non-lawyers are not regulated nor are they required to carry insurance to compensate clients for errors and omission in the legal work or claims of theft by unscrupulous individuals marketing legal services. When the Law Society receives complaints about an unqualified or untrained person providing legal assistance, the Society will investigate and take appropriate action if there is a potential for harm to the public.

The Law Society has obtained a court order prohibiting the following individual and businesses from engaging in the unauthorized practice of law:

- **Darren Lee and Ruohan Dong & Associates Inc.** d.b.a. **R. Dong & Associates**, of Richmond, have consented to an order prohibiting them from preparing incorporation documents, giving legal advice and holding themselves out as being qualified or entitled to provide these legal services. ❖

## Credentials hearing

LAW SOCIETY RULE 2-69.1 provides for the publication of summaries of credentials hearing panel decisions on applications for enrolment in articles, call and admission and reinstatement. For the full text of hearing panel decisions, visit the Regulation & Insurance / Regulatory Hearings section of the Law Society website.

### ROBERT JOHN DOUGLAS McROBERTS

Hearing (application for call and admission): May 20, 2010

Panel: Gavin Hume, QC, Chair, Stacy Kuiack and David Mossop, QC

Report issued: August 3, 2010 (2010 LSBC 19)

Counsel: Jason Twa for the Law Society and Robert John Douglas McRoberts on his own behalf

Robert John Douglas McRoberts was called to the Bar in Manitoba in 1978. In 1982, he was admitted as a lawyer in Saskatchewan; however, he is currently a disqualified member due to non-payment of his inactive member fee.

McRoberts' law practice began in Manitoba with a small firm that quickly grew to a 35-40 person firm with offices located in a number of shopping malls. His firm later expanded to 12 locations in BC, Alberta, Saskatchewan and Toronto.

McRoberts has been the subject of 10 claims under the Law Society of Manitoba's Professional Liability Insurance Program. He has been the subject of three discipline hearings with the Law Society of Manitoba and has been given one caution. He was also involved in 21 civil actions between 1989 and 1995.

In March 2008, McRoberts submitted an application for Call and Admission on Transfer to the Law Society of BC. The Law Society conducted an investigation concerning his application.

In six of the 10 professional liability insurance claims, no damages were paid by the insurance program. While three claims were still outstanding,

the panel determined there was no suggestion of any dishonesty with respect to those claims. Only one of the three outstanding claims has a reserve. The panel noted that this was of some significance.

The panel reviewed the Law Society of Manitoba's decision regarding the three charges of professional misconduct and found that no dishonesty was involved.

After a detailed review of the civil actions, the panel determined that McRoberts was not personally involved in a number of the civil litigation matters, but instead was named as a result of the role that he played in the firm. The evidence showed that the administrative and system problems were directly associated with the rapid growth of his firm. The panel noted that McRoberts' firm had significantly improved its administrative practices and that his discipline record and civil action ceased after 1995.

The panel concluded that McRoberts met the test of "good character" and found no suggestion of any dishonesty or other inappropriate motive or activities on his part in the discipline matters and civil actions. That conclusion was reinforced by three letters of commendation as well as evidence given by a BC lawyer who had been associated with McRoberts and attested to his honesty and skill.

The panel ordered that McRoberts be called and admitted, on the condition that he:

1. take the Small Firm Practice Course;
2. take a minimum of two hours of continuing legal education on practice management for each of the next two calendar years; and
3. practise only in the following arrangements for a minimum of two years:
  - (a) as an employee or as a member of an existing firm approved by the Practice Standards Committee, if at all possible;
  - (b) failing that, under supervision on terms and conditions agreeable to the Practice Standards Committee. ❖

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